IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8809 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

ROSHANBEN OSMANBHAI

Appearance:

1. Special Civil Application No. 8809 of 1999

MR PRADIP D BHATE A.G.P. for Petitioner No. 1-2

MR TR MISHRA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/03/2004

ORAL JUDGEMENT

The State of Gujarat and the Deputy Secretary, Road & Building Dept., have challenged in this petition, which is essentially under Article 227 of the

Constitution of India the judgement and award made by the Labour Court at Rajkot in Reference (L.C.R.) No. 870 of 1986 dated 6th May, 1998. The Labour Court by the said judgment has partly allowed the Reference of the respondent and has quashed and set aside the order terminating the service of respondent and has directed petitioners to reinstate the respondent on her original post with continuity of service and payment of 60% backwages together with all the incidental benefits.

1.1. The respondent had raised industrial dispute challenging the order of termination of her service dated 1st February, 1985. According to her, the said order was bad in law and she was required to be taken back in the service. The dispute was initially referred to the Conciliation Officer, but since conciliation proceedings did not yield fruitful results, the dispute was ultimately referred to the Labour Court for adjudication.

1.2. Before the Labour Court the respondent filed statement of claim at Exh.3 in which, she had averred that she had worked for four years prior to the date of termination of her service with the petitioner i.e. 1st February, 1985. According to her, she had rendered satisfactory service to the petitioner which is looking after the work of road construction and its maintenance. Her last drawn daily wage was Rs.14=00. According to her, without any reason or justification, the petitioners had terminated her service vide order dated 1st February, 1985. Her grievance was that before terminating her service no notice nor any salary in lieu of the notice was paid to her. She had further averred that she had worked for 240 days continuously in a year and the petitioner was required to comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947. She has also made grievance in the statement of claim that her juniors were absorbed in the service while her service was terminated.

2. The said application was resisted by the petitioner by filing written statement at Exh.7. In the said written statement, the petitioner had raised three main contentions namely that the petitioner had not put in 240 days continuous service in a year; that she had left the service on her own and no order of termination was passed against her and lastly that the petitioner was not an "Industry" within the meaning of provisions of the Industrial Disputes Act and the service of the respondent and employees of the petitioners are governed by P.W.D. Manual and the provisions of the Industrial Disputes Act were not applicable.

3. At the hearing, the respondent examined herself. So far as the petitioner is concerned, one Dineshkumar Shantilal Shah was examined on their behalf. In the evidence, the respondent reiterated what had been stated in the statement of claim.

3.1. As against that, the petitioner's witness in his evidence stated that the respondent had not worked for 240 days in a year. He had also denied that the petitioner had passed the order terminating her service and lastly he had stated that the Road & Building department of the State Government not being an "Industry" was not amenable to the jurisdiction of Labour Court. In the cross examination, he had admitted that the relevant registers to show the attendance of the respondent on work were available and so were the wage registers. He had also admitted that notice was received from other side calling upon the petitioner to produce all those registers before the Labour Court. It appears that thereafter the petitioner had not examined any other witness.

3.2. On the strength of the material that was produced before it, the Labour Court came to the conclusion that the order of terminating the service of the respondent with effect from 1st February, 1985 was bad in law and, therefore, it was required to be quashed and set aside. The Labour Court, therefore, quashed the said order issuing the aforesaid directions for reinstatement as well as to pay incidental benefits. It is the said award which is now under challenge before this Court.

4. Mr. Pradip Bhate learned A.G.P. appearing for the petitioners made three submissions which were also advanced before the Labour Court. He has further submitted that the petitioner had already reinstated the respondent on her original post together with backwages and right now she is in the service of the petitioners.

4. Having gone through the record of the petition and also having considered the submissions made by learned A.G.P. it appears that the main contention of the petitioners before the Labour Court as well before this Court was that what was factually averred by the respondent in her statement of claim as well as in her evidence was not true. She had not worked for 240 days in a year and hence, being a daily wager, her service could be terminated by the petitioners at any time without previous notice. This factual aspect has been adequately pleaded by both the parties before the Labour

Court. When the claim of the respondent regarding continuous service of 240 days in a year was challenged by the petitioners, it was its duty to produce relevant record in respect of the said challenge. In fact the witness of the petitioners has admitted that the relevant record was available with the petitioners. However, despite the notice having been given to it, the said record is not produced. The Labour Court has, therefore, drawn adverse inference against the petitioners. When this is the state of evidence, I do not find any error having been committed by the Labour Court in holding against the petitioners on that count. In other words, the Labour Court was absolutely within its bounds to hold that the respondent had completed 240 days service in a year, just preceding the order of termination. If that be so, it was incumbent upon the petitioners to follow the requisite procedure under Section 25-F of the Industrial Disputes Act. Admittedly the same has not been done. The order of termination of service dated 1st February, 1985 is, therefore, obviously illegal and it is required to be quashed and it has been rightly quashed by the Labour Court.

4.1. So far as the contention of the petitioners that the respondent had voluntarily abandoned her service and no order of termination of her service was passed, also cannot be accepted for this very reason, that when the attendance or absence of the petitioner could be proved by producing the relevant registers and also by producing the relevant other documentary evidence in the form of issuance of notice calling her to report for duty etc., nothing has been produced on record by the petitioner. When it has failed to produce any material to substantiate its say, it is very difficult to accept the second contention of the petitioners with regard to voluntary abandonment of the service by the respondent on that count also. The Labour Court appears to be absolutely right and no interference is required by this Court. Both these aspects are essentially questions of fact which have been adequately discussed and decided by the Labour Court, and sitting under Article 227 of the Constitution of India, it is now not possible for me to reappreciate the material/evidence that has been produced before the Labour Court and to come to different conclusion.

4.2. So far as the legal submission namely that the petitioner is not an "Industry" is concerned, it is a mixed question of law and fact. The petitioner was required to be first make out adequate factual foundation for raising this contention. That has not been done.

Secondly, the petitioners' advocate appearing before the Labour Court was called upon to submit written arguments and so also the respondent's advocate. However, the petitioners' advocates had not furnished any written submissions and, therefore, except for raising the contention in the written statement and making a statement in the evidence, neither any material in support of the contention nor any legal submissions have been made on that aspect by the petitioners. In that view of the matter, I am totally in agreement with the finding of the Labour Court.

5. As stated by Mr. Bhate learned A.G.P. the respondent has already been reinstated on her original post and she has already been paid backwages as per the direction of the Labour Court. For that purpose they are relying on the communication received by the office of the Government Pleader dated 16th October, 2000 & 22nd January, 2001. He is, therefore, directed to put on record copies of those letters.

In view of the aforesaid, this petition has no merit and it is required to be dismissed and it is hereby, ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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